

**IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

United States of America,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 3:08-cr-47
)	
Martin Torres, Jr.,)	REPORT AND RECOMMENDATION
)	
Defendant.)	

A petition alleges that Martin Torres, Jr. violated conditions of supervised release. Pursuant to a referral from the district judge, this court held a hearing on that petition on October 11, 2017. At the hearing, Torres admitted to one of the violations charged, the government recommended dismissal of the other charge, and the parties made a joint recommendation for disposition. That joint recommendation is that Torres's supervised release be revoked, that he be sentenced to a term of custody of 60 days, with credit for time served since October 2, 2017, and that no additional term of supervised release be ordered after completion of the term of custody.

Background

Torres pled guilty to a controlled substance crime, and, in 2009, he was sentenced to a term of 109 months in custody, followed by a term of five years of supervised release. In April 2017, his supervised release was revoked, and he was sentenced to a term of custody of 77 days, followed by two years of supervised release.

Alleged Violations

The current petition charges that Torres was arrested on state charges—felonious restraint, domestic violence, and reckless endangerment. Additionally, the petition charges failure to obtain a substance abuse evaluation as the supervising officer had

required. During an October 11, 2017 hearing, Torres admitted that he had not obtained the required substance abuse evaluation.

The state charges remain pending. The government recommends that the violation relating to the state charges be dismissed, leaving adjudication of that matter to the state court.

Statutory Provisions and Sentencing Guidelines

At the time of sentencing, Torres was in Criminal History Category III. Under the policy statements of the sentencing guidelines, the violations to which Torres admitted are Grade C. The policy statements recommend that, if supervised release of an individual in Category III is revoked for a Grade C violation, that individual be sentenced to a term of custody of five to eleven months. U.S.S.G. § 7B1.4(a).

Parties' Recommendations

The parties jointly recommend:

- (1) that Torres's supervised release be revoked;
- (2) that Torres be sentenced to a term of custody of 60 days, with credit for time served since October 2, 2017, when he came into federal custody;
- (3) that Torres not be required to serve any additional term of supervised release after completion of the 60 days in custody; and
- (4) that the charge in the petition relating to violation of state law be dismissed.

Discussion

At the hearing, Torres admitted to having failed to follow the directive to obtain a substance abuse evaluation. If that is considered as the only violation, the jointly recommended disposition—though below that of the guidelines' recommendations—is

more harsh than would likely be imposed. Additionally, in not requiring a substance evaluation and follow-up treatment, Torres would be left to address his substance abuse issues on his own after the term of custody is completed. And, in the event Torres were found guilty of the pending state court charges, there would be no federal consequences for that conduct.

But, viewing the circumstances of the case in totality, the recommended disposition appears appropriate. Supervised release was previously revoked. As reflected in the April 2017 violation report, the probation service has expended considerable resources in addressing Torres's substance abuse disorder. He needs to take responsibility for that himself.

Recommendation

This court recommends that the district judge find Torres violated conditions of supervised release by failing to obtain a substance abuse evaluation and that the district judge order the disposition which the parties have jointly recommended.

Dated this 12th day of October, 2017.

/s/ Alice R. Senechal
Alice R. Senechal
United States Magistrate Judge

NOTICE OF RIGHT TO OBJECT¹

Any party may object to this Report and Recommendation by filing with the Clerk of Court no later than **October 18, 2017**, a pleading specifically identifying those portions of the Report and Recommendation to which objection is made and the basis of any objection. If the parties have no objection, they should advise the district judge so that an order may be entered prior to October 18, 2017. Failure to object or to comply with this procedure may forfeit the right to seek review in the Court of Appeals.

¹ See Fed. R. Civ. P. 72(b); D.N.D. Civ. L.R. 72.1.